
RECORD OF PROCEEDINGS

Minutes of the Special Meeting of the Board of Directors of Siena Lake Metropolitan District February 28, 2023

A Special Meeting of the Board of Directors of Siena Lake Metropolitan District, Town of Gypsum, Eagle County, Colorado, was held Tuesday, November 8, 2022 at 10:00 am. This meeting was held via Zoom.

Attendance The following Directors were present and acting:

- George Roberts
- Alison Perry
- David Young
- Rick MacCutcheon
- Bruce Lewis

Also in attendance were:

- Jim Froelich, Jen Hunt and Jim Cooper, Peritus Ventures, Developer Representatives
- Trish Harris, White Bear Ankele Tanaka & Waldron
- Eric Weaver, Marchetti & Weaver, LLC
- Debbie Braucht, Marchetti & Weaver, LLC, Secretary for the Meeting

Call to Order

The Meeting of the Board of Directors of Siena Lake Metropolitan District was called to order, noting a quorum was present.

Conflicts of Interest

Ms. Harris stated the requirements of Colorado law to disclose any potential conflicts of interest or potential breaches of fiduciary duty of the Board of Directors to the Secretary of State. The members of the Board were requested to disclose any potential conflicts of interest with regard to any matters scheduled for discussion at this meeting, and incorporated for the record those applicable disclosures made by the Board members prior to this meeting in accordance with statute. It was noted by legal counsel that disclosures of potential conflicts of interest were filed with the Secretary of State for all Directors.

Consideration of Changes to the Agenda

No changes were made to the Agenda.

Minutes

Upon motion duly made and seconded it was unanimously

RESOLVED to approve the November 8, 2022 minutes as presented.

RECORD OF PROCEEDINGS

Siena Lake Metropolitan District February 28, 2023 Meeting Minutes

Developer Status Update on Infrastructure

Mr. Cooper gave a report on the status of the various infrastructure construction projects, the spring schedule and what projects are weather dependent.

2023 Meeting Calendar

Mr. Weaver reviewed the 2023 draft meeting calendar calling for quarterly meetings. Upon motion duly made and seconded it was unanimously

RESOLVED to approve the 2023 Meeting Calendar.

Status of Pump Station Operations and Maintenance Agreement (Tri Party Agreement)

Ms. Harris stated they revised the agreement a few weeks ago to strip out the language regarding prior costs. Airport Gateway and Buckhorn Valley Metro District No.1 will work that out between themselves. Going forward Airport Gateway, Buckhorn Valley Metro Dist No.1 and Siena Lake Metro District will share the pumphouse costs but a separate electric meter will be installed for each entity. Progress is being made but the agreement is not ready for approval yet.

Ratification of Infrastructure Acquisition and Reimbursement Agreement

An agreement was drafted in March 2021 and adopted by the Board but was never approved by the developer. Subsequently the developer wanted a fill up note instead of a loan agreement. This type of note is a more in-depth procedure involving bond counsel because it is the issuance of debt. While the fill up note is still under consideration this Infrastructure Acquisition and Reimbursement Agreement was approved and signed by the Developer. Upon motion duly made and seconded it was unanimously

RESOLVED to ratify the execution of Infrastructure Acquisition and Reimbursement Agreement.

Resolution for Acceptance of District Eligible Cost and Approval of Cost Certification #3 for Infrastructure, Letters Agreements for District Improvements and Town of Gypsum Improvements

Mr. Weaver stated this cost certification has been a challenge not only because they received a revised spreadsheet a few hours ago but because of the Brivar Contract. Contracts are not typically fixed fee contracts for construction so time and materials costs can be reviewed, compared to quantities in the field and inspected. After discussion, Mr. Cooper and Mr. Froehlich reported that Brivar is an affiliated entity of

RECORD OF PROCEEDINGS

Siena Lake Metropolitan District February 28, 2023 Meeting Minutes

the Peritus and Siena Lake LLC companies. He can guarantee all the work was done they are just asking for reimbursement. Mr. Weaver reported that even though there is risk that the contract is not arms length due to the related parties, the engineers have determined costs that are being certified are reasonable. Another point of concern they have and included in the Infrastructure Acquisition Agreement is the requirement for lien waivers from all subcontractors. Mr. Froelich said they have not heard of this requirement so they do not have lien waivers from their subcontractors. The question was asked then, what guarantee does the District have that all subcontractors have been paid? There was discussion of the Hobbs mechanics lien that has now been bonded for. Ms. Harris stated if the infrastructure was 100% complete it would not be as big of an issue but since the infrastructure is not complete it puts the District at risk. She added there are two agreements that are exhibits to the Resolution today which state the Developer will be responsible for maintenance and repair of the improvements included in this cost certification until they are fully accepted by the District and/or the Town of Gypsum or the cost of maintenance will be deducted from future cost reimbursements. Mr. Weaver added a lien waiver from Brivar Construction is absolutely required and the 10% retainage amount should be withheld until the improvements are accepted by the Town. Mr. Froelich stated they agree with the retainage amount. After a lengthy discussion, upon motion duly made and seconded, with four votes in favor and one opposed, it was

RESOLVED to approve Cost Certification #3 in the amount of \$2,691,559.44 with 10% retainage withheld for a net payment amount of \$2,422,403.49, subject to review by District legal counsel and accountant and the following documents being provided:

- Accountant's Certification
- Design Engineer's Certification
- General Contractors Contract
- Schedio's Certification
- General Contractor Lien Waiver;

and subject to the next Cost Certification to include copies of all invoices, statements and evidence of payment thereof equal to the proposed District Eligible Costs, including lien waivers from any suppliers and subcontractors of the Cost Certification #3 and any further cost certifications in

RECORD OF PROCEEDINGS

Siena Lake Metropolitan District February 28, 2023 Meeting Minutes

accordance with Sched. 1, Par.2 of the Infrastructure Acquisition and Reimbursement Agreement

The opposition vote was because the Infrastructure Acquisition Agreement requires lien waivers which were not provided. Director Young added proof of lien waivers will be required for any future certifications which is also included in the Infrastructure Acquisition Agreement.

Financial Statements

Mr. Weaver stated the preliminary December 31, 2022 financials were favorable to budget because some work and services were not completed in 2022.

Accounts Payable

Mr. Weaver stated the AP list is broken out between capital and operational costs which also include a calculation of what the District needs for a developer advance to pay operational costs including the audit.

RESOLVED to approve and ratify the Accounts Payable listing as presented.

Adjournment

There being no further business to come before the Board, upon motion duly made and seconded it was unanimously

RESOLVED to adjourn the meeting of the Siena Lake Metropolitan District Board of Directors held February 28, 2023.

Respectfully Submitted,



Secretary to the Meeting